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07 FEB 14 AM 10:42  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
PDL DEPUTY

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**TRIPPLE AAA ASSOCIATION FOR  
CHILDREN AND ADULTS WITH  
DEVELOPMENTAL DISABILITIES,  
SUING ON BEHALF OF ITS  
MEMBERS;**

**Plaintiffs,**

**v.**

**HISAMITSU CALIFORNIA  
LABORATORIES; HISAMITSU  
PHARMACEUTICAL CO., INC.  
And DOES 1 THROUGH 10, Inclusive**

**Defendants.**

Case No. **07 CV 0307 H JMA**

**CLASS ACTION**

**CIVIL COMPLAINT:  
DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ; CIVIL  
CODE 51, 52, 54, 54.1]**

**DEMAND FOR JURY TRIAL  
[F.R.Civ.P. rule 38(b)]**

**INTRODUCTION**

Plaintiffs herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to

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compel access compliance because empirical research on the effectiveness of Title III of the Americans with Disabilities Act indicates this Title has failed to achieve full and equal access simply by the executive branch of the Federal Government funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals with disabilities give actual notice of potential access problems to places of public accommodation without a federal civil rights action, the public accommodations do not remove the access barriers. Moreover, although there has been substantial litigation and enforcement of the barrier removal requirements, there no enforcement of the auxiliary aid requirements. A public accommodation is required to provide auxiliary aids and services that are necessary to ensure equal access to the goods, services, facilities, privileges, or accommodations that it offers, unless an undue burden or a fundamental alteration would result. This obligation extends only to individuals with disabilities who have physical or mental impairments, such as vision, hearing, or speech impairments, that substantially limit the ability to communicate. In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved. Public accommodations should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication. Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively. Auxiliary aids and services include a wide range of services and devices that promote effective communication. Examples of auxiliary

1 aids and services for individuals who are deaf or hard of hearing include qualified interpreters,  
2 notetakers, computer-aided transcription services, written materials, telephone handset amplifiers,  
3 assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open  
4 and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays,  
5 and exchange of written notes. Examples for individuals with vision impairments include qualified  
6 readers, taped texts, audio recordings, Brailled materials, large print materials, and assistance in  
7 locating items. **TRIPPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH**  
8 **DEVELOPMENTAL DISABILITIES** advocates for the provision of auxiliary aids. Therefore,  
9 Plaintiffs make the following allegations in this federal civil rights action:

10 **JURISDICTION AND VENUE**

11 1. The federal jurisdiction of this action is based on the Americans with Disabilities Act, 42  
12 United States Code 12101-12102, 12181-12183 and 12201, et seq. Venue in the Judicial District  
13 of the United States District Court of the Southern District of California is in accordance with 28  
14 U.S.C. § 1391(b) because a substantial part of Plaintiffs' claims arose within the Judicial District of  
15 the United States District Court of the Southern District of California.

16 **SUPPLEMENTAL JURISDICTION**

17 2. The Judicial District of the United States District Court of the Southern District of  
18 California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant  
19 to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all  
20 the causes of action or claims derived from federal law and those arising under state law, as herein  
21 alleged, arose from common nucleus of operative facts. The common nucleus of operative facts,  
22 include, but are not limited to, the incidents where Plaintiffs were denied full and equal access to  
23 Defendants' facilities, goods, and/or services in violation of both federal and state laws when they  
24 attempted to enter, use, and/or exit Defendants' facilities as described below within this Complaint.  
25 Further, due to this denial of full and equal access, **TRIPPLE AAA ASSOCIATION FOR**  
26 **CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON**  
27 **BEHALF OF ITS MEMBERS;** and other persons with disabilities were injured. Based upon the  
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1 said allegations, the state actions, as stated herein, are so related to the federal actions that they  
2 form part of the same case or controversy and the actions would ordinarily be expected to be tried  
3 in one judicial proceeding.

4 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

5 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
6 franchise organized and existing and/or doing business under the laws of the State of California.  
7 Plaintiffs are further informed and believe and thereon allege that Defendants HISAMITSU  
8 CALIFORNIA LABORATORIES; HISAMITSU PHARMACEUTICAL CO., INC. are the owners,  
9 operators, and/or lessors of the real property, as well as the business operated thereon.

10 Company Name: HISAMITSU CALIFORNIA LABORATORIES

11  
12 Business Address:

13 2732 LOKER AVE W  
14 CARLSBAD, CA 92008-6603  
15

16  
17 CALIFORNIA SECRETARY OF STATE  
18

19  
20 Company Name: HISAMITSU PHARMACEUTICAL CO., INC.

21 Mailing Address:

22 2732 LOKER AVE WEST  
23 CARLSBAD, CA 92008  
24

25  
26  
27 Type: STATEMENT & DESIGNATION BY FOREIGN CORPORATION  
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1 Status: ACTIVE

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3 FTB Status:

4 Suspension Code: NOT SUSPENDED (IN GOOD STANDING)

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6  
7 Date of Incorporation/Qualification: 6/1/1998

8  
9 State or Country of Incorporation: JAPAN

10  
11 Registered Agent: DANGE VEERAPANENI

12  
13 Registered Office:

14 2732 LOKER AVE WEST

15 CARLSBAD, CA 92008

16  
17 4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the  
18 organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH  
19 DEVELOPMENTAL DISABILITIES , SUING ON BEHALF OF ITS MEMBERS; and persons  
20 associated with its Members who accompanied Members to Defendants' facilities. Defendants  
21 Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of.  
22 HISAMITSU CALIFORNIA LABORATORIES; HISAMITSU PHARMACEUTICAL CO., INC.  
23 Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through  
24 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray  
25 leave of the court to amend this complaint to allege the true names and capacities of the Does when  
26 ascertained.

27 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them  
28 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,

1 general partner, limited partner, agent, employee, representing partner, or joint venturer of the  
2 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs  
3 are further informed and believe, and thereon allege, that each of the Defendants herein gave  
4 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.  
5 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO ALL**  
6 **DEFENDANTS**

7 6. Plaintiffs are members of a group within the State of California composed of persons with a  
8 wide range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to  
9 access retail merchandise establishments, like Defendants' establishments located within the  
10 facility in which **HISAMITSU CALIFORNIA LABORATORIES; HISAMITSU**  
11 **PHARMACEUTICAL CO., INC.** is located. Plaintiffs are precluded from equal access to  
12 Defendants' establishment so meaningfully because the establishment fails to provide access for  
13 members of the disability community who use a wheelchair for mobility to disabled parking  
14 facilities, exterior path of travel facilities, entrance facilities, interior path of travel facilities, and  
15 display facilities. The Supreme Court of the United States has held as long as the class  
16 representative provides adequate representation for the class' interests, the court has the power to  
17 adjudicate the rights and obligations of all class members – even those who would otherwise be  
18 beyond the reach of its personal jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985).  
19 This case stands for the proposition that minimum contacts are not required with nonresident  
20 members of a plaintiff class because, “the burdens placed by a State upon absent class action  
21 plaintiff are not of the same order or magnitude as those it places on an absent defendant.” Id.  
22 Plaintiffs allege they will insure class members shall receive adequate notice of the proceedings and  
23 the opportunity to “opt out,” if required. Defendants have conducted themselves such as to  
24 establish a pattern and practice of architectural discrimination. Plaintiffs allege that Defendants  
25 have control over each and every facility, establishment, and/or business located within the  
26 Defendant Landlords' facilities in which Defendant **HISAMITSU CALIFORNIA**  
27 **LABORATORIES; HISAMITSU PHARMACEUTICAL CO., INC.** is located. Accordingly,  
28 Plaintiffs allege Defendants are responsible for removing architectural barriers at Defendants'

1 facilities and the establishment/business contained therein. For the aforementioned reasons,  
2 Plaintiffs allege they are proper class representatives for members of the disability community who  
3 use a wheelchair for mobility because the members of the disability community who use a  
4 wheelchair for mobility are so numerous that joinder is impracticable due to the fact more than one  
5 hundred (100) persons fall within the membership description. Also, the questions of law or fact  
6 are so common because the members of the disability community who use a wheelchair for  
7 mobility are being denied their civil rights under federal and state laws – that is, each member of  
8 the disability community who use a wheelchair for mobility suffered substantially similar violations  
9 relating to exterior path of travel facilities, entrance facilities, restrooms, interior path of travel  
10 facilities, and display facilities. Further, the claims or defenses of the representative parties are  
11 typical – Plaintiffs have the right to access facilities, establishments, and businesses like those  
12 within the facility in which Defendant **HISAMITSU CALIFORNIA LABORATORIES;**  
13 **HISAMITSU PHARMACEUTICAL CO., INC.** is located for many reasons such as the purchase  
14 of retail merchandise. Defendants’ facilities are open to the general public and Plaintiffs have been  
15 denied access because of violations, as outlined above and specifically addressed elsewhere within  
16 this Complaint. Additionally, Plaintiffs, as the named representatives, will fairly and adequately  
17 represent the interests of the class because Plaintiffs and the members of the disability community  
18 in the State of California who use a wheelchair for mobility have suffered substantially similar  
19 violations. Finally, a pattern and practice exists on the part of Defendants, and each of them, of  
20 architectural discrimination at their public facilities located within the State of California. On  
21 information and good faith belief, Plaintiffs thereon allege that Defendants, prior to the passing of  
22 the Americans With Disabilities Act in 1992, conceived, commissioned, designed, and  
23 implemented among other things, a design for their public facilities, including, but not limited to  
24 disabled parking facilities, exterior path of travel facilities, restroom, entrance facilities, interior  
25 path of travel facilities, and display facilities, which do not meet the minimal standards outlined  
26 under the federal regulations known as the Americans With Disabilities Act Accessibility  
27 Guidelines (“ADAAG”) and state regulations, also known as Title 24 of the California Building  
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1 Code, and to which non-compliant plan they continue to utilize to the injury of the members of the  
2 class. For these reasons and the facts as stated herein, Plaintiffs have the right to maintain this  
3 statewide class action pursuant to Fed.R.Civ.P. Rule 23(b).

4 **CONCISE SET OF FACTS**

5 7. Plaintiff's Members went to the **HISAMITSU CALIFORNIA LABORATORIES;**  
6 **HISAMITSU PHARMACEUTICAL CO., INC.** As Said Members are unable to walk  
7 Plaintiff's Members uses a walker or wheelchair. Plaintiff alleges its visually and hearing impaired  
8 members desire to go to Defendants' facility but cannot because of lack of auxiliary aids.  
9 Defendants failed to provide auxiliary aids and services that are necessary to ensure equal access to  
10 the goods, services, privileges, or accommodations that it offers. Title 28, part 36.303 of Code of  
11 Federal Regulations states:

12 (a) General. A public accommodation shall take those steps that may be necessary  
13 to ensure that no individual with a disability is excluded, denied services, segregated  
14 or otherwise treated differently than other individuals because of the absence of  
15 auxiliary aids and services, unless the public accommodation can demonstrate that  
16 taking those steps would fundamentally alter the nature of the goods, services,  
17 facilities, privileges, advantages, or accommodations being offered or would result  
18 in an undue burden, i.e., significant difficulty or expense.

19 (b) Examples. The term "auxiliary aids and services" includes:

20 (1) Qualified interpreters, notetakers, computer-aided transcription services, written  
21 materials, telephone handset amplifiers, assistive listening devices, assistive  
22 listening systems, telephones compatible with hearing aids, closed caption decoders,  
23 open and closed captioning, telecommunications devices for deaf persons (TDD's),  
24 videotext displays, or other effective methods of making aurally delivered materials  
25 available to individuals with hearing impairments;

26 (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print  
27 materials, or other effective methods of making visually delivered materials  
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1 available to individuals with visual impairments;

2 (3) Acquisition or modification of equipment or devices; and

3 (4) Other similar services and actions.

4 (c) Effective communication. A public accommodation shall furnish appropriate  
5 auxiliary aids and services where necessary to ensure effective communication with  
6 individuals with disabilities.

7 Defendants failed to comply with Title 28, part 36.303 of Code of Federal Regulations as it failed  
8 to provide Qualified readers, taped texts, audio recordings, Brailled materials, or large print  
9 materials. Plaintiffs specifically allege that Defendants knew, to a substantial certainty, that the  
10 architectural barriers precluded wheelchair access. First, Plaintiffs will prove that Defendants had  
11 actual knowledge that the architectural barriers precluded wheelchair access - that it would be hard  
12 to believe that noncompliance with ADAAG as to accessible entrances could be other than  
13 intentional. Second, due to the abundance of ADA information and constant news covers of ADA  
14 lawsuits, Defendants had actual knowledge of the ADA and decided deliberately not to remove  
15 architectural barriers. Third, Defendants have no plans to remodel. Fourth, it would be hard to  
16 believe that Defendants did not have actual knowledge of ADA given all the ADA public  
17 awareness campaigns, the abundance of free ADA information and the media's constant ADA  
18 coverage. Fifth, a human being acting for the defendants made a conscious decision as to how to  
19 proceed given the presence of the architectural barriers. Plaintiffs allege any alternative methods  
20 preclude integration of wheelchair patrons, as it requires them to use a second-class entrance. Also,  
21 expert testimony will show the facility contained inaccessible features. Plaintiffs allege businesses  
22 often state that they have few customers with disabilities. Plaintiffs allege such customers avoid  
23 patronizing inaccessible business and are deterred from patronizing such businesses. The courts  
24 have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California  
25 courts have held that the California disability access laws manifest an intent on the part of the  
26 legislature that they be interpreted in a manner that maximizes incentives for compliance, (see  
27 Donald, 266 Cal. Rptr. at 808-11) the courts conclude that application of this canon of construction  
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1 requires that 54.1 and 51, and their respective damages provisions, 54.3 and 52, be interpreted as  
2 extending to claims based on incidents of deterrence. The courts therefore hold that where a  
3 plaintiff can prove that violations of applicable California disability access standards deterred her  
4 on a particular occasion from attempting to attend a place of public accommodation, that plaintiff  
5 states a claim for relief under California Civil Code 54.1 and 51 and, in particular, for damages,  
6 under 54.3 and 52. Plaintiffs allege people with disabilities still face systemic discrimination each  
7 and every day. One of the most debilitating forms of discrimination is segregation imposed by  
8 others. Discrimination also includes exclusion, or denial or benefits, services, or other  
9 opportunities that are as effective and meaningful as those provided to others. Discrimination  
10 results from actions or inactions that discriminate by effect as well as by intent or design.  
11 Discrimination also includes harms resulting from the construction of transportation, architectural,  
12 and communication barriers and the adoption or application of standards and criteria and practices  
13 and procedures based on thoughtlessness or indifference-of benign neglect. Discrimination also  
14 includes harms affecting individuals with a history of disability, and those regarded by others as  
15 having a disability as well as persons associated with such individuals that are based on false  
16 presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and  
17 pernicious mythologies. Discrimination also includes the effects a person's disability may have on  
18 others. The ADA aim is: (1) To provide a clear and comprehensive national mandate for the  
19 elimination of discrimination against individuals with disabilities; [and] (2) to provide clear, strong,  
20 consistent, enforceable standards addressing discrimination against individuals with disabilities.  
21 (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)) Plaintiffs allege the legislative history of the Act,  
22 which reflects congressional, concerns over the deleterious effects of discrimination against people  
23 with disabilities. As a result, Congress incorporated within Title II of the ADA the remedial  
24 provision in Section 504 of the Rehabilitation Act of 1973. (As amended 29 U.S.C. § 794a)(42  
25 U.S.C. § 12133)(See *Smith v. Barton*, 914 F.2d 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct.  
26 2825 (1991)) Much has been written recently about the ADA and its mechanisms of enforcement.  
27 (See e.g., *Doran v. Del Taco, Inc.*, --- F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347  
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1 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn Restaurant*, 96 F.Supp.2d 1065, 1070-71  
2 (D.Haw.2000)) For purposes of this suit, it is sufficient to note that the statute creates a private  
3 right of action through which a litigant may seek injunctive relief as well as attorneys' fees and  
4 costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be said that because an attorney has  
5 chosen to specialize in an area, which provides statutory attorneys fees his practice is necessarily  
6 suspect. Class actions, antitrust, and consumer protection statutes are just some of the examples  
7 where the legislature has made a determination that society will benefit from private attorneys  
8 general. The ADA is but another example. Plaintiff TRIPPLE AAA ASSOCIATION FOR  
9 CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES , SUING ON BEHALF  
10 OF AND ITS MEMBERS; is an organization that advocates on the behalf of children and others  
11 with disabilities specifically including adults who use wheelchairs when their civil rights and  
12 liberties have been violated. Plaintiff's Member visited the place in 2006 and plans on returning to  
13 the place and he encountered architectural barriers there. Association standing requires that (1) its  
14 members would otherwise have standing to sue in their own right, (2) the interests the association  
15 seeks to protect are germane to the organization's purpose and (3) neither the claim asserted nor the  
16 relief requested requires the participation of individual members. *Hunt v. Washington Apple*  
17 *Advertising Commission*, 432 U.S. 333, 343; *Greater Los Angeles Council On Deafness, Inc. v.*  
18 *Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987). Plaintiffs have standing to bring this action.  
19 Plaintiff Association has at least four members who use wheelchairs as they cannot walk at all. The  
20 purpose of the Association is to fight to remove access and architectural barriers.

21  
22 8. Plaintiff's Member and Plaintiff(s) have physical impairments because their conditions  
23 affect one or more of the following body systems: neurological, musculoskeletal, special sense  
24 organs, and/or cardiovascular. Further, Plaintiff's Member and Plaintiff(s) said physical  
25 impairments substantially limits one or more of the following major life activities: walking and  
26 sight. In addition, Plaintiff's Member and Plaintiff(s) cannot perform one or more of the said major  
27 life activities in the manner, speed, and duration when compared to the average person. Moreover,  
28 Plaintiff's Member and Plaintiff(s) has a history of or has been classified as having a physical

1 impairment as required by 42 U.S.C. § 12102(2)(A).

2 9. Plaintiff's Members expressly intend to patronize the establishment and the property that is  
3 the subject of this Complaint in the immediate future.

4 10. Defendants failed to remove access barriers within the parking, exterior path of travel and  
5 entrance public accommodations of Defendants' establishment. Plaintiff's Member was deterred  
6 from patronizing the facility.

7 11. The architectural regulations or "design standards" implemented by the federal ADA are  
8 often referred to in the literature as "ADAAGs," which is an acronym for "ADA Architectural  
9 Guidelines." (See *Independent Living I*, 982 F. Supp. at pp. 707-708 ["The guidelines issued by the  
10 Access Board are denominated the 'ADA Accessibility Guidelines' ('ADAAG.'). The design  
11 standards enacted by the Attorney General are identical to the ADAAGs, but are denominated as  
12 'Standards.' Despite the technical distinction, the two terms are often used interchangeably."];  
13 *Access Now, Inc. v. Ambulatory Surgery Center Group, Ltd.* (S.D. Fla. 2001) 146 F. Supp. 2d  
14 1334, 1336 ["These guidelines are called ... ("ADAAG") ... ."].) The "ADAAGs" are found in  
15 Appendix A to Part 36 of title 28 of the Code of Federal Regulations. The ADAAG violations  
16 alleged here are basically so intuitive that it would be hard to believe that noncompliance with them  
17 could be other than intentional.

18 12. Plaintiff(s) was deterred from patronizing the facility due to the alleged ADA violations  
19 and/or alleged architectural barriers outlined in Paragraphs 10 through 11 above.

20 13. While Plaintiff's Member expressly wants to patronize Defendant's establishment and the  
21 property that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's  
22 Member is expressly deterred from returning to the establishment and the property that is the  
23 subject of this Complaint due to the existence of the architectural barriers outlined above in  
24 Paragraphs 10 through 11.

25 14. Pursuant to federal and state law, Defendants are required to remove barriers to their  
26 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties under  
27 the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also, Defendants  
28

1 should have known that individuals with disabilities are not required to give notice to a  
2 governmental agency before filing suit alleging Defendants failed to remove architectural and sight  
3 barriers.

4 15. Plaintiffs believe and herein allege Defendants' facilities have access violations not  
5 directly known by Plaintiff which preclude or limit access by other members of Plaintiff  
6 organization or other persons with disabilities.

7 16. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) were  
8 discriminated against each time he patronized Defendants' establishment. Plaintiff's Member was  
9 extremely upset due to Defendants' conduct.

10 **NOTICE**

11 17. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint.  
12 (See *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9<sup>th</sup> Cir 2000)) However, a member made  
13 an auxiliary aid request.  
14

15 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**  
16 **DEFENDANT**

17 18. **HISAMITSU CALIFORNIA LABORATORIES; HISAMITSU**  
18 **PHARMACEUTICAL CO., INC.;** and Does 1 through 10 will be referred to collectively  
19 hereinafter as "Defendants."  
20

21 19. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:

22 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

23 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The Americans**  
24 **With Disabilities Act Of 1990**

25 **Claim I**

26 19. Based on the facts stated above, Defendants discriminated against Plaintiffs on the basis of  
27 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or  
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1 accommodations of any place of public accommodation as Defendants own, lease (or lease to), or  
2 operate a place of public accommodation in violation of 42 U.S.C. §12182.

3 Claim II

4 20. Based on the facts stated above, Defendants discriminated against Plaintiffs directly, or  
5 through contractual, licensing, or other arrangements, to a denial of the opportunity of the  
6 individual or class to participate in or benefit from the goods, services, facilities, privileges,  
7 advantages, or accommodations of an entity in violation of 42 U.S.C. §12182.

8 Claim III

9 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as it is  
10 discriminatory to afford an individual or class of individuals, on the basis of a disability or  
11 disabilities of such individual or class, directly, or through contractual, licensing, or other  
12 arrangements with the opportunity to participate in or benefit from a good, service, facility,  
13 privilege, advantage, or accommodation that is not equal to that afforded to other individuals in  
14 violation of 42 U.S.C. §12182.

15 Claim IV

16 22. Based on the facts stated above, Defendants discriminated against Plaintiffs as it is  
17 discriminatory to provide an individual or class of individuals, on the basis of a disability or  
18 disabilities of such individual or class, directly, or through contractual, licensing, or other  
19 arrangements with a good, service, facility, privilege, advantage, or accommodation that is different  
20 or separate from that provided to other individuals.

21 Claim V

22 23. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants  
23 failed to afforded to an individual with a disability in the most integrated setting appropriate to the  
24 needs of the individual in violation of 42 U.S.C. §12182.

25 Claim VI

26 24. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants  
27 utilized standards or criteria or methods of administration that have the effect of discriminating on  
28

1 the basis of disability; or that perpetuate the discrimination of others who are subject to common  
2 administrative control in violation of 42 U.S.C. §12182.

3 Claim VII

4 25. Based on the facts stated above, Defendants discriminated against Plaintiffs as it is  
5 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages,  
6 accommodations, or other opportunities to an individual or entity because of the known disability  
7 of an individual with whom the individual or entity is known to have a relationship or association  
8 in violation of 42 U.S.C. §12182. See Niece v. Fitzner 922 F. Supp. 1208 (1996)

9 Claim VIII

10 26. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants  
11 engaged in the following specific prohibitions: (i) the imposition or application of eligibility criteria  
12 that screen out or tend to screen out an individual with a disability or any class of individuals with  
13 disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or  
14 accommodations, unless such criteria can be shown to be necessary for the provision of the goods,  
15 services, facilities, privileges, advantages, or accommodations being offered; (ii) a failure to make  
16 reasonable modifications in policies, practices, or procedures, when such modifications are  
17 necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to  
18 individuals with disabilities;

19 27. (iii) a failure to take such steps as may be necessary to ensure that no individual with a  
20 disability is excluded, denied services, segregated or otherwise treated differently than other  
21 individuals because of the absence of auxiliary aids and services; (iv) a failure to remove  
22 architectural barriers, and communication barriers that are structural in nature, in existing facilities  
23 in violation of 42 U.S.C. §12182.

24 Claim IX

25 28. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendant  
26 failed to demonstrate that the removal of a barrier is not readily achievable, and made such goods,  
27 services, facilities, privileges, advantages, or accommodations available through alternative  
28

1 methods in a segregated manner in violation of 42 U.S.C. §12182.

2 Claim X

3 29. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants  
4 altered the use of their establishment in a manner that affected or could have affected the usability  
5 of the facility or part thereof and failed to make alterations in such a manner that, to the maximum  
6 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals  
7 with disabilities, including individuals who use wheelchairs in violation of 42 U.S.C. §12183.

8  
9 30. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

10  
11 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
12 **CALIFORNIA ACCESSIBILITY LAWS**

13 **CLAIM I: Denial Of Full And Equal Access**

14 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's  
15 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,  
16 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or  
17 operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility  
18 violated California's Title 24 Accessible Building Code by failing to provide access to Defendants'  
19 facilities due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,  
20 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb  
21 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
22 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
23 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,  
24 Detectable Warnings, Signage, and Telephones. These violations denied Plaintiff's Member and  
25 Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s)  
26 was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's  
27 Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing  
28 severe emotional distress. The Disabled Persons Act is found in *sections 54* of the Civil Code, and

1 has been around in some form on the statute books since the late 1960's--more than 20 years before  
2 the federal ADA. (See Stats. 1968, ch. 461.) The Disabled Persons Act begins with the statement in  
3 *subdivision (a) of section 54* that "Individuals with disabilities or medical conditions have the same  
4 right as the general public to the full and free use of ... public facilities, and other public places." (*β*  
5 *54, subd. (a).*) *Section 54* is immediately followed by *section 54.1, subdivision (a)(3)* of which--in  
6 contrast to the more spartan reference to the ADA in *section 51*--specifically incorporates ADA  
7 *regulations*. The enforcement of *section 54* is to be found in *section 54.3. Subdivision (a)(3) of*  
8 *section 54.1* provides: " 'Full and equal access,' for purposes of this section in its application to  
9 transportation, means access that meets the standards of Titles II and III of the Americans with  
10 Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto,  
11 except that, if the laws of this state prescribe higher standards, it shall mean access that meets those  
12 higher standards." *Subdivision (a) of section 54.3* provides in its entirety: "Any person or persons,  
13 firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities  
14 as specified in *Sections 54* and *54.1* or otherwise interferes with the rights of an individual with a  
15 disability under *Section 54, 54.1, and 54.2* is liable for each offense for the actual damages and any  
16 amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of  
17 three times the amount of actual damages but in no case less than one thousand dollars (\$ 1,000),  
18 and attorney's fees as may be determined by the court in addition thereto, suffered by any person  
19 denied any of the rights provided in *Sections 54, 54.1, and 54.2*. 'Interfere' for purposes of this  
20 section, includes, but is not limited to, preventing or causing the prevention of a guide dog, signal  
21 dog, or service dog from carrying out its functions in assisting a disabled person." *Section 54.3* was  
22 construed in the 1990 *Cafe Royale* decision as providing for strict liability--that is, liability without  
23 any need for intentional conduct--prior to the 1992 legislation which added both *subdivision (f) to*  
24 *section 51* and *subdivision (c) of section 54* (back then in the context of the minimum penalty under  
25 *section 54.3* which was \$ 250; now it is \$ 1,000). *Cafe Royale* was a case decided prior to the  
26 enactment of the ADA, and contains not a word about federal law. It was also decided exclusively  
27 under *Civil Code section 54 et seq.*, and contains not one word on the Unruh Act. In *Cafe Royale*,  
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1 a wheelchair user (a former deputy Attorney General and member of the Attorney General's task  
2 force on disability) discovered that he could not reach the main dining area of a tiered restaurant on  
3 his own, though the restaurant offered to lift him up the stairs. He declined an offer of help because  
4 it would attract attention and because he might be dropped in the process of being bodily picked up  
5 and moved. He sued the restaurant under *section 54.3* because of the absence of ramps or elevators  
6 to the second-tiered area. The restaurant thought that it had complied with the law because its  
7 architect thought, based on an informal conversation with an employee of the San Francisco  
8 building department, that a certain number of handicapped seating places was "all that was needed  
9 for compliance." (See *id. at p. 174.*) The building department employee, however, gave the  
10 restaurant architect erroneous advice. In fact, the State Building Standards Code (required by  
11 *Government Code section 4450 et seq*) provided that all floors of a restaurant be on a common level  
12 or else accessible by either ramps or elevators. While a hardship exemption might be obtained, 75  
13 percent of the main dining area would still need to be handicap accessible, and the Cafe Royale's  
14 option of seating wheelchair patrons in the bar or having them carried to the common area was a  
15 violation. On appeal, the fact of the violation was understood by all parties: "All parties agreed that  
16 Cafe Royale's seating capacity was in violation of the handicap access requirements." (*Cafe Royale,*  
17 *supra, 218 Cal. App. 3d at p. 174.*) Hence issue was joined as to whether the restaurant's "good  
18 faith" belief that it was "in compliance" (*ibid.*) was sufficient to deny the patron recovery under  
19 *section 54.3*. The trial court thought so, but the appellate court disagreed. The appellate court  
20 reasoned thusly: the fact that *section 54.3* said a person who "denies or interferes with admittance  
21 to or enjoyment of the public facilities as specified in *section 54* and *54.1* ... is liable for each  
22 offense ... but in no case less than two hundred fifty dollars (\$ 250) ... ." The court said: "The plain  
23 meaning of this language is that ordinarily minimum statutory damages in the amount of \$ 250  
24 must be awarded for a denial of equal access in violation of *section 54 et seq., notwithstanding the*  
25 *defendant's intent.*" (*Id. at p. 177.*) The *Cafe Royale* court reasoned that an interpretation of *section*  
26 *54.3* that included an element of intentional violation would, because the level of compliance  
27 would diminish, yield "a result that is clearly repugnant to the statutory purpose." Further, the  
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1 Donald case held a Plaintiff need not visit the facility to sue for compliance. (*Id. at pp. 179-180.*) So  
2 the trial court reversed the trial court judgment awarding the plaintiff nothing, and concluded that  
3 he was entitled to the \$ 250 statutory minimum. (*See id. at pp. 180-181.*) Café Royale applies here.  
4 Thus, Defendants' good faith efforts, if any, are irrelevant as is any reliance on a city building  
5 inspector.

6 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

7 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint, Defendants  
8 failed and refused to provide a reasonable alternative by modifying its practices, policies, and  
9 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others  
10 similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1.  
11 Thus, Plaintiff's Member and Plaintiff(s) were subjected to discrimination in violation of Civil  
12 Code § 54.1.

13 **CLAIM III: Violation Of The Unruh Act**

14 33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because  
15 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
16 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly  
17 discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52,  
18 and 54.1. Plaintiffs allege the access violations alleged here are so obvious as to implicate at least a  
19 prima facie case of discriminatory intent.

20 34. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiffs' Second Cause  
21 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable  
22 harm unless Defendants are ordered to remove architectural, non-architectural, and communication  
23 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory  
24 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and  
25 a substantial segment of the disability community. Plaintiffs allege there is a state and national  
26 public interest in requiring accessibility in places of public accommodation. Plaintiffs have no  
27 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to  
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return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with state civil rights laws enacted for the benefit of individuals with disabilities.

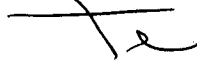
35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

**DEMAND FOR JUDGMENT FOR RELIEF:**

- A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
- B. For damages pursuant to Cal. Civil Code § 52 or 54.3
- C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52; 54.3;
- D. A Jury Trial and;
- E. For such other further relief as the court deems proper.

Respectfully submitted:

**PINNOCK & WAKEFIELD, A.P.C.**



Dated: February 13, 2007

By: /S/ THEODORE A. PINNOCK, ESQ.  
MICHELLE L. WAKEFIELD, ESQ.  
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS TRIPPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON BEHALF OF ITS MEMBERS;

DEFENDANTS HISAMITSU CALIFORNIA LABORATORIES; HISAMITSU PHARMACEUTICAL CO., INC. and does 1 through 10, Inclusive, Defendants.

FILED

07 FEB 14 AM 10:42

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT S. D. San Diego COUNTY (IN U.S. PLAINTIFF CASES ONLY) DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED BY: POE DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Theodore A. Pinnock, Esq. SBN 153434 Michelle L. Wakefield, Esq. SBN 200424 David C. Wakefield, Esq. SBN:185736 Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

07 CV 0307 H JMA

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OR PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PT DEF 1 Incorporated or Principal Place of Business in This State 2 Incorporated and Principal Place of Business in Another State 3 Foreign Nation PT DEF 4 5 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF FACTS. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury-Medical Malpractice, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$ TO BE DETERMINED AT TRIAL

Check YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE January 18, 2007

SIGNATURE OF ATTORNEY OF RECORD

134973 Ser 2/14/07 \$350

UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

# 134973 - A3  
February 14, 2007

Code	Case #	Qty	Amount
CV006900	3-07-CV-0307		60.00 CC
	Judge - HUFF		
CV006400			150.00 CC
CV510000			190.00 CC

Total -> 350.00

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